

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PENTAIR WATER TREATMENT (OH)
COMPANY (formerly known as
ESSEF CORPORATION) and
PENTAIR WATER POOL & SPA, INC.
(formerly known as PAC-FAB,
INC.) and PENTAIR WATER BELGIUM
BVBA (formerly known as STRUCTURAL
EUROPE N.V. formerly known as SFC),

Plaintiffs,

08 Civ. 3604 (BSJ)

-against-

FIDELITY & CASUALTY INSURANCE
COMPANY OF NEW YORK and
CNA INSURANCE COMPANIES,

Defendants.

-----X

**DECLARATION IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS THE COMPLAINT**

ROBERT M. KAPLAN, under penalty of perjury, declares as follows:

1. I am an attorney at law, admitted to practice before this Court and a member of Ferber Chan Essner & Coller, LLP, attorneys for defendants The Continental Insurance Company, as successor by merger to defendant Fidelity & Casualty Insurance Company of New York (“Fidelity”) and CNA Insurance Companies.

2. I submit this declaration to set forth certain exhibits in support of defendants’ motion for an order (i) pursuant to F.R.C.P. 12(b)(6), dismissing the third claim for relief in the complaint (Exhibit A) on the ground it fails to state a claim upon

which relief can be granted and (ii) pursuant to F.R.C.P. 12(b)(6) and 17(b), dismissing CNA Insurance Companies as a defendant on the ground it lacks the capacity to be sued in this action.

3. These exhibits consist of the complaint and certain documents referenced in the complaint.

4. Attached as Exhibit A is a copy of plaintiffs' complaint, dated April 15, 2008.

5. Attached as Exhibit B is a copy of an excess umbrella liability insurance policy issued by Fidelity covering the policy period June 1, 1994 to June 1, 1995, policy no. CXU-001807.

6. Attached as Exhibit C is a copy of an umbrella liability insurance policy issued by Westchester Fire Insurance Co. covering the policy period June 1, 1994 to June 1, 1995, policy no. CUA 1002970.

7. Attached as Exhibit D is a copy of a letter dated December 11, 2006 from Ronald B. Lee of Roetzel & Andress, LPA to "CNA International."

8. Attached as Exhibit E is a copy of a letter dated September 21, 2007 from Clifford C. Masch of Reminger & Reminger Co., LPA to Megan Faust of Roetzel & Andress, LPA.

9. Attached as Exhibit F is a copy of a letter dated January 23, 2008 from Laura M. Faust of Roetzel & Andress, LPA to Clifford C. Masch of Reminger Co., LPA.

10. Attached as Exhibit G is a copy of a letter dated March 6, 2008 from Laura M. Faust of Roetzel & Andress, LPA to Clifford C. Masch of Reminger Co., LPA.

11. Attached as Exhibit H is a copy of a letter dated March 27, 2008 from Clifford C. Masch of Reminger Co., LPA to Megan Faust of Roetzel & Andress, LPA.

12. Attached as Exhibit I is a copy of a letter dated April 14, 2008 from Clifford C. Masch of Reminger Co., LPA to Megan Faust of Roetzel & Andress, LPA.

13. Therefore, for all the reasons set forth in the accompanying memorandum of law, it is respectfully requested that defendants' motion be granted in all respects.

Dated: New York, New York
June 5, 2008

/s/Robert M. Kaplan
ROBERT M. KAPLAN